

13-22-1. Short title.

This chapter is known as the "Charitable Solicitations Act."

Enacted by Chapter 122, 1987 General Session

13-22-2. Definitions.

As used in this chapter:

(1) (a) "Charitable organization" or "organization" means any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:

(i) that is or holds itself out to be:

(A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;

(B) for the benefit of a public safety, law enforcement, or firefighter fraternal association; or

(C) established for any charitable purpose;

(ii) who solicits or obtains contributions solicited from the public for a charitable purpose; or

(iii) in any manner employs a charitable appeal as the basis of any solicitation or employs an appeal that reasonably suggests or implies that there is a charitable purpose to any solicitation.

(b) "Charitable organization" includes a "chapter," "branch," "area," "office," or similar "affiliate" or any person soliciting contributions within the state for a charitable organization that has its principal place of business outside the state.

(2) "Charitable purpose" means any benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective or for the benefit of a public safety, law enforcement, or firefighter fraternal association.

(3) "Charitable solicitation" or "solicitation" means any request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. A charitable solicitation may be made in any manner, including:

(a) any oral or written request, including any request by telephone, radio or television, or other advertising or communications media;

(b) the distribution, circulation, or posting of any handbill, written advertisement, or publication; or

(c) the sale of, offer or attempt to sell, or request of donations in exchange for any advertisement, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which any appeal is made for any charitable purpose, or the use of the name of any charitable organization or movement as an inducement or reason for making any purchase donation, or, in connection with any sale or donation, stating or implying that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose.

(4) "Charitable sales promotion" means an advertising or sales campaign,

conducted by a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or purpose.

(5) "Commercial co-venturer" means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes.

(6) (a) "Contribution" means the pledge or grant for a charitable purpose of any money or property of any kind, including any of the following:

- (i) a gift, subscription, loan, advance, or deposit of money or anything of value;
- (ii) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for charitable purposes; and
- (iii) fees, dues, or assessments paid by members, when membership is conferred solely as consideration for making a contribution.

(b) "Contribution" does not include:

- (i) money loaned to a charitable organization by a financial institution in the ordinary course of business; or
- (ii) fees, dues, or assessments paid by members when membership is not conferred solely as consideration for making a contribution.

(7) "Contributor" means any donor, pledgor, purchaser, or other person who makes a contribution.

(8) "Director" means the director of the Division of Consumer Protection.

(9) "Division" means the Division of Consumer Protection of the Department of Commerce.

(10) "Material fact" means information that a person of ordinary intelligence and prudence would consider relevant in deciding whether or not to make a contribution in response to a charitable solicitation.

(11) (a) "Professional fund raiser," except as provided in Subsection (11)(b), means any person who:

- (i) for compensation or any other consideration solicits contributions for charitable purposes, or plans or manages the solicitation of contributions for or on behalf of any charitable organization or any other person;
- (ii) engages in, or who holds himself out to persons in this state as being independently engaged in, the business of soliciting contributions for a charitable organization;
- (iii) manages, supervises, or trains any solicitor whether as an employee or otherwise; or
- (iv) uses a vending device or vending device decal for financial or other consideration that implies a solicitation of contributions or donations for any charitable organization or charitable purposes.

(b) "Professional fund raiser" does not include a bona fide officer, director, volunteer, or full-time employee of a charitable organization.

(12) (a) "Professional fund raising counsel or consultant" or other comparable designation or title means a person who:

- (i) for compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable organization, whether or not at any time the person has custody of

contributions from a solicitation;

(ii) does not solicit contributions; and

(iii) does not employ, procure, or engage any compensated person to solicit or receive contributions.

(b) "Professional fund raising counsel or consultant" does not include an attorney, investment counselor, or banker who in the conduct of that person's profession advises a client when actually engaged in the giving of legal, investment, or financial advice.

(13) "Vending device" means a container used by a charitable organization or professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or donation whether or not the device offers a product or item in return for the contribution or donation. "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any other container.

(14) "Vending device decal" means any decal, tag, or similar designation material that is attached to a vending device, whether or not used or placed by a charitable organization or professional fund raiser, that would indicate that all or a portion of the proceeds from the purchase of items from the vending device will go to a specific charitable organization.

Amended by Chapter 210, 2001 General Session

13-22-3. Investigative and enforcement powers -- Education.

(1) The division may make any investigation it considers necessary to determine whether any person is violating, has violated, or is about to violate any provision of this chapter or any rule made or order issued under this chapter. As part of the investigation, the division may:

(a) require a person to file a statement in writing;

(b) administer oaths, subpoena witnesses and compel their attendance, take evidence, and examine under oath any person in connection with an investigation; and

(c) require the production of any books, papers, documents, merchandise, or other material relevant to the investigation.

(2) Whenever it appears to the director that substantial evidence exists that any person has engaged in, is engaging in, or is about to engage in any act or practice prohibited in this chapter or constituting a violation of this chapter or any rule made or order issued under this chapter, the director may do any of the following in addition to other specific duties under this chapter:

(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the director may issue an order to cease and desist from engaging in the act or practice or from doing any act in furtherance of the activity; or

(b) the director may bring an action in the appropriate district court of this state to enjoin the acts or practices constituting the violation or to enforce compliance with this chapter or any rule made or order issued under this chapter.

(3) Whenever it appears to the director by a preponderance of the evidence that a person has engaged in or is engaging in any act or practice prohibited in this chapter or constituting a violation of this chapter or any rule made or order issued under this chapter, the director may assess an administrative fine of up to \$500 per violation up to

\$10,000 for any series of violations arising out of the same operative facts.

(4) Upon a proper showing, the court hearing an action brought under Subsection (2)(b) may:

- (a) issue an injunction;
- (b) enter a declaratory judgment;
- (c) appoint a receiver for the defendant or the defendant's assets;
- (d) order disgorgement of any money received in violation of this chapter;
- (e) order rescission of agreements violating this chapter;
- (f) impose a fine of not more than \$2,000 for each violation of this chapter; and
- (g) impose a civil penalty, or any other relief the court considers just.

(5) (a) In assessing the amount of a fine or penalty under Subsection (3), (4)(f), or (4)(g), the director or court imposing the fine or penalty shall consider the gravity of the violation and the intent of the violator.

(b) If it does not appear by a preponderance of the evidence that the violator acted in bad faith or with intent to harm the public, the director or court shall excuse payment of the fine or penalty.

(6) The division may provide or contract to provide public education and voluntary education for applicants and registrants under this chapter. The education may be in the form of publications, advertisements, seminars, courses, or other appropriate means. The scope of the education may include:

- (a) the requirements, prohibitions, and regulated practices under this chapter;
 - (b) suggestions for effective financial and organizational practices for charitable organizations;
 - (c) charitable giving and solicitation;
 - (d) potential problems with solicitations and fraudulent or deceptive practices;
- and
- (e) any other matter relevant to the subject of this chapter.

Amended by Chapter 382, 2008 General Session

13-22-4. Violation a misdemeanor -- Damages.

(1) A person who willfully violates any provision of this chapter, either by failing to comply with any requirement or by doing any act prohibited in the chapter, is guilty of a class B misdemeanor. Each day the violation is committed or permitted to continue constitutes a separate punishable offense.

(2) Nothing in this section precludes any person damaged as a result of a charitable solicitation from maintaining a civil action for damages or injunctive relief.

(3) The division may maintain an action for damages or injunctive relief on behalf of itself or any other person to enforce compliance with this chapter.

Amended by Chapter 185, 1994 General Session

13-22-5. Registration required.

(1) (a) It is unlawful for any organization to engage in an activity described in Subsection (1)(b) unless the organization is:

- (i) exempt under Section 13-22-8; or

(ii) registered with the division in accordance with this chapter.

(b) Unless an organization meets the requirements of Subsection (1)(a), the organization may not knowingly solicit, request, promote, advertise, or sponsor a charitable solicitation if the charitable solicitation:

(i) originates in Utah;

(ii) is received in Utah; or

(iii) is caused to be made through business operations in Utah.

(2) Subsection (1) does not prohibit an organization from receiving an unsolicited contribution.

(3) It is unlawful for any professional fund raiser to knowingly solicit, request, promote, advertise, or sponsor the solicitation in this state of any contribution for a charitable organization, whether or not the charitable organization is exempt under Section 13-22-8, unless the professional fund raiser and any nonexempt charitable organization that is benefitted are registered with the division.

(4) It is unlawful for any professional fund raising counsel or consultant to knowingly plan, manage, advise, counsel, consult, or prepare material for, or with respect to, the solicitation in this state of a contribution for a charitable organization, whether or not the charitable organization is exempt under Section 13-22-8, unless the professional fund raising counsel or consultant and any nonexempt charitable organization that is benefitted are registered with the division.

Amended by Chapter 18, 2005 General Session

13-22-6. Application for registration.

(1) An applicant for registration or renewal of registration as a charitable organization shall:

(a) pay an application fee as determined under Section 63J-1-504; and

(b) submit an application on a form approved by the division which shall include:

(i) the organization's name, address, telephone number, facsimile number, if any, and the names and addresses of any organizations or persons controlled by, controlling, or affiliated with the applicant;

(ii) the specific legal nature of the organization, that is, whether it is an individual, joint venture, partnership, limited liability company, corporation, association, or other entity;

(iii) the names and residence addresses of the officers and directors of the organization;

(iv) the name and address of the registered agent for service of process and a consent to service of process;

(v) the purpose of the solicitation and use of the contributions to be solicited;

(vi) the method by which the solicitation will be conducted and the projected length of time it is to be conducted;

(vii) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and any other items;

(viii) a statement of what percentage of the contributions collected as a result of the solicitation are projected to remain available for application to the charitable purposes declared in the application, including a satisfactory statement of the factual

basis for the projected percentage;

(ix) a statement of total contributions collected or received by the organization within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use made of the contributions;

(x) a copy of any written agreements with any professional fund raiser involved with the solicitation;

(xi) disclosure of any injunction, judgment, or administrative order or conviction of any crime involving moral turpitude with respect to any officer, director, manager, operator, or principal of the organization;

(xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds for the solicitation or fundraising;

(xiii) a statement of whether or not the charity, or its parent foundation, will be using the services of a professional fund raiser or of a professional fund raising counsel or consultant;

(xiv) if either the charity or its parent foundation will be using the services of a professional fund raiser or a professional fund raising counsel or consultant:

(A) a copy of all agreements related to the services; and

(B) an acknowledgment that fund raising in the state will not commence until both the charitable organization, its parent foundation, if any, and the professional fund raiser or professional fund raising counsel or consultant are registered and in compliance with this chapter; and

(xv) any additional information the division may require by rule.

(2) If any information contained in the application for registration becomes incorrect or incomplete, the applicant or registrant shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information required by the division.

(3) In addition to the registration fee, an organization failing to file a registration application or renewal by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the registration application or renewal were due to be filed.

(4) Notwithstanding Subsection (1), the registration fee for a certified local museum under Section 9-6-603 is 65% of the registration fee established under Subsection (1).

Amended by Chapter 183, 2009 General Session

13-22-8. Exemptions.

(1) Section 13-22-5 does not apply to:

(a) a solicitation that an organization conducts among its own established and bona fide membership exclusively through the voluntarily donated efforts of other members or officers of the organization;

(b) a bona fide religious, ecclesiastical, or denominational organization if:

(i) the solicitation is made for a church, missionary, religious, or humanitarian purpose; and

(ii) the organization is either:

(A) a lawfully organized corporation, institution, society, church, or established

physical place of worship, at which nonprofit religious services and activities are regularly conducted and carried on;

(B) a bona fide religious group:

(I) that does not maintain specific places of worship;

(II) that is not subject to federal income tax; and

(III) not required to file an IRS Form 990 under any circumstance; or

(C) a separate group or corporation that is an integral part of an institution that is an income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported by funds solicited outside its own membership or congregation;

(c) a solicitation by a broadcast media owned or operated by an educational institution or governmental entity, or any entity organized solely for the support of that broadcast media;

(d) except as provided in Subsection 13-22-21(1), a solicitation for the relief of any person sustaining a life-threatening illness or injury specified by name at the time of solicitation if the entire amount collected without any deduction is turned over to the named person;

(e) a political party authorized to transact its affairs within this state and any candidate and campaign worker of the party if the content and manner of any solicitation make clear that the solicitation is for the benefit of the political party or candidate;

(f) a political action committee or group soliciting funds relating to issues or candidates on the ballot if the committee or group is required to file financial information with a federal or state election commission;

(g) any school accredited by the state, any accredited institution of higher learning, or club or parent, teacher, or student organization within and authorized by the school in support of the operations or extracurricular activities of the school;

(h) a public or higher education foundation established under Title 53A, State System of Public Education, or Title 53B, State System Of Higher Education;

(i) a television station, radio station, or newspaper of general circulation that donates air time or print space for no consideration as part of a cooperative solicitation effort on behalf of a charitable organization, whether or not that organization is required to register under this chapter;

(j) a volunteer fire department, rescue squad, or local civil defense organization whose financial oversight is under the control of a local governmental entity;

(k) any governmental unit of any state or the United States; and

(l) any corporation:

(i) established by an act of the United States Congress; and

(ii) that is required by federal law to submit an annual report:

(A) on the activities of the corporation, including an itemized report of all receipts and expenditures of the corporation; and

(B) to the United States Secretary of Defense to be:

(I) audited; and

(II) submitted to the United States Congress.

(2) Any organization claiming an exemption under this section bears the burden of proving its eligibility for, or the applicability of, the exemption claimed.

(3) Each organization exempt from registration pursuant to this section that

makes a material change in its legal status, officers, address, or similar changes shall file a report informing the division of its current legal status, business address, business phone, officers, and primary contact person within 30 days of the change.

(4) The division may by rule:

(a) require organizations exempt from registration pursuant to this section to file a notice of claim of exemption;

(b) prescribe the contents of the notice of claim; and

(c) require a filing fee for the notice, as determined under Section 63J-1-504.

Amended by Chapter 189, 2014 General Session

13-22-9. Professional fund raiser's or fund raising counsel's or consultant's permit.

(1) It is unlawful for any person or entity to act as a professional fund raiser or professional fund raising counsel or consultant, whether or not representing an organization exempt from registration under Section 13-22-8, without first obtaining a permit from the division by complying with all of the following application requirements:

(a) pay an application fee as determined under Section 63J-1-504; and

(b) submit a written application, verified under oath, on a form approved by the division that includes:

(i) the applicant's name, address, telephone number, facsimile number, if any;

(ii) the name and address of any organization or person controlled by, controlling, or affiliated with the applicant;

(iii) the applicant's business, occupation, or employment for the three-year period immediately preceding the date of the application;

(iv) whether it is an individual, joint venture, partnership, limited liability company, corporation, association, or other entity;

(v) the names and residence addresses of any officer or director of the applicant;

(vi) the name and address of the registered agent for service of process and a consent to service of process;

(vii) if a professional fund raiser:

(A) the purpose of the solicitation and use of the contributions to be solicited;

(B) the method by which the solicitation will be conducted and the projected length of time it is to be conducted;

(C) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and any other items;

(D) a statement of what percentage of the contributions collected as a result of the solicitation are projected to remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of the flat fee; and

(E) a statement of total contributions collected or received by the professional fund raiser within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use made of the

contributions;

(viii) if a professional fund raising counsel or consultant:

(A) the purpose of the plan, management, advice, counsel or preparation of materials for, or respect to the solicitation and use of the contributions solicited;

(B) the method by which the plan, management, advice, counsel, or preparation of materials for, or respect to the solicitation will be organized or coordinated and the projected length of time of the solicitation;

(C) the anticipated expenses of the plan, management, advice, counsel, or preparation of materials for, or respect to the solicitation, including all commissions, costs of collection, salaries, and any other items;

(D) a statement of total fees to be earned or received from the charitable organization declared in the application, and what percentage of the contributions collected as a result of the plan, management, advice, counsel, or preparation of materials for, or respect to the solicitation are projected after deducting the total fees to be earned or received remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of such flat fee; and

(E) a statement of total net fees earned or received within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use of the net earned or received fees in the planning, management, advising, counseling, or preparation of materials for, or respect to the solicitation and use of the contributions solicited for the charitable organization;

(ix) disclosure of any injunction, judgment, or administrative order against the applicant or the applicant's conviction of any crime involving moral turpitude;

(x) a copy of any written agreements with any charitable organization;

(xi) the disclosure of any injunction, judgment, or administrative order or conviction of any crime involving moral turpitude with respect to any officer, director, manager, operator, or principal of the applicant;

(xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds;

(xiii) an acknowledgment that fund raising in the state will not commence until both the professional fund raiser or professional fund raising counsel or consultant and the charity, and its parent foundation, if any, are registered and in compliance with this chapter; and

(xiv) any additional information the division may require by rule.

(2) If any information contained in the application for a permit becomes incorrect or incomplete, the applicant or registrant shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information required by the division.

(3) In addition to the permit fee, an applicant failing to file a permit application or renewal by the due date or filing an incomplete permit application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the permit application or renewal were due to be filed.

Amended by Chapter 124, 2013 General Session

13-22-11. Expiration of registration and permits.

(1) Each charitable organization registration issued under this chapter expires annually on the earlier of January 1, April 1, July 1, or October 1 following the completion of 12 months after the date of initial issuance.

(2) Each professional fund raiser's permit issued under this chapter expires the earlier of:

(a) annually on the date of issuance; or

(b) when the professional fund raiser ceases affiliation with the charitable organization named in the application for permit.

(3) Each professional fund raising counsel's or consultant's permit issued under this chapter expires the earlier of:

(a) annually on the date of issuance; or

(b) when the professional fundraising counsel or consultant ceases affiliation with the charitable organization named in the application for permit.

(4) A registration or permit may be renewed only by complying with the requirements for obtaining the original registration or permit.

Amended by Chapter 187, 1996 General Session

13-22-12. Grounds for denial, suspension, or revocation.

(1) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke an application, registration, permit, or information card, upon a finding that the order is in the public interest and that:

(a) the application for registration or renewal is incomplete or misleading in any material respect;

(b) the applicant or registrant or any officer, director, agent, or employee of the applicant or registrant has:

(i) violated this chapter or committed any of the prohibited acts and practices described in this chapter;

(ii) been enjoined by any court, or is the subject of an administrative order issued in this or another state, if the injunction or order includes a finding or admission of fraud, breach of fiduciary duty, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity, truthfulness, or mental competence of the applicant;

(iii) been convicted of a crime involving moral turpitude;

(iv) obtained or attempted to obtain a registration or a permit by misrepresentation;

(v) materially misrepresented or caused to be misrepresented the purpose and manner in which contributed funds and property will be used in connection with any solicitation;

(vi) caused or allowed any paid solicitor to violate any rule made or order issued under this chapter by the division;

(vii) failed to take corrective action with its solicitors who have violated this

chapter or committed any of the prohibited acts and practices of this chapter;

(viii) used, or attempted to use a name that either is deceptively similar to a name used by an existing registered or exempt charitable organization, or appears reasonably likely to cause confusion of names;

(ix) failed to timely file with the division any report required in this chapter or by rules made under this chapter; or

(x) failed to pay a fine imposed by the division in accordance with Section 13-22-3; or

(c) the applicant for registration or renewal has no charitable purpose.

(2) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to revoke or suspend a claim of exemption filed under Subsection 13-22-8(4), upon a finding that the order is in the public interest and that:

(a) the notice of claim of exemption is incomplete or false or misleading in any material respect; or

(b) any provision of this chapter, or any rule made or order issued by the division under this chapter has been violated in connection with a charitable solicitation by any exempt organization.

Amended by Chapter 382, 2008 General Session

13-22-13. Prohibited practices.

In connection with any solicitation, each of the following acts and practices is prohibited:

(1) stating or implying that registration constitutes endorsement or approval by the division or any governmental entity;

(2) violating any of the requirements of this chapter or any rule made under this chapter;

(3) making any untrue statement of a material fact or failing to state a material fact necessary to make statements made, in the context of the circumstances under which they are made, not misleading, whether in connection with a charitable solicitation or a filing with the division; and

(4) violating an order issued by the division under Subsection 13-22-3(2) or (3).

Amended by Chapter 185, 1994 General Session

13-22-14. Accuracy not guaranteed.

(1) By issuing a permit, the state does not guarantee the accuracy of any representation contained in the permit, nor does it warrant that any statement made by the holder of the permit is truthful. The state makes no certification as to the charitable worthiness of any organization on whose behalf a solicitation is made nor as to the moral character of the holder of the permit.

(2) The following statement shall appear on each permit: "THE STATE OF UTAH MAKES NO CERTIFICATION AS TO THE CHARITABLE WORTHINESS OF ANY ORGANIZATION ON WHOSE BEHALF A SOLICITATION IS MADE NOR AS TO THE MORAL CHARACTER OF THE HOLDER OF THE PERMIT."

(3) No solicitation for charitable purposes shall use the fact or requirement of

registration or of the filing of any report with the division pursuant to this chapter with the intent to cause or in a manner tending to cause any person to believe that the solicitation, the manner in which it is conducted, its purposes, any use to which the proceeds will be applied or the person or organization conducting it has been or will be in any way endorsed, sanctioned, or approved by the division or any governmental agency or office.

Amended by Chapter 210, 2001 General Session

13-22-15. Financial reports required.

(1) Each charitable organization registered under this chapter shall file each year of registration an annual financial report or an IRS Form 990, 990EZ, or 990PF. The financial report or IRS Form 990, 990EZ, or 990PF shall be filed with the division within 30 days after the end of the year reported. If an annual financial report or IRS Form 990, 990EZ, or 990PF are not available during its first year of registration, the charitable organization shall provide quarterly financial reports to the division within 30 days after the end of the quarter reported.

(2) Each financial report shall disclose:

- (a) the gross amount of contributions received;
 - (b) the amount of contributions disbursed or to be disbursed to each charitable organization or charitable purpose represented;
 - (c) aggregate amounts paid to any professional fund raiser;
 - (d) amounts spent for overhead, expenses, commissions, and similar purposes;
- and
- (e) the name and address of any professional fund raiser used by the organization.

(3) Each report required under this section shall be signed under oath by an officer or principal of the organization.

(4) The registration of any organization that fails to file a timely report or IRS Form 990, 990EZ, or 990PF as required in this section or files an incomplete report or IRS Form 990, 990EZ, or 990PF is automatically suspended pending a final order of the division under Section 13-22-12. The division may reinstate the registration after receiving:

- (a) a report or IRS Form 990, 990EZ, or 990PF fulfilling the requirements of this section;
- (b) an application for renewed registration; and
- (c) a penalty of \$25 for each month or part of a month after the date on which the quarterly report or IRS Form 990 was due to be filed.

Amended by Chapter 210, 2001 General Session

13-22-16. Separate accounts and receipts required.

(1) Each organization required to be registered under this chapter and each professional fund raiser shall segregate and maintain all contributed funds in an account held separately from its operating account. Each contribution in the control or custody of the professional solicitor shall, in its entirety and within 10 days of its receipt,

be deposited in an account at a bank or other federally insured financial institution which shall be in the name of the charitable organization. The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals.

(2) Each organization required to be registered under this chapter and each professional fund raiser shall maintain and use duplicate receipts for contributions of money, securities, and cash equivalents so that one receipt is issued to each contributor and one is maintained by the charitable organization.

Amended by Chapter 210, 2001 General Session

13-22-17. Written agreement required.

(1) A professional fund raiser may only engage in activities on behalf of a charitable organization through written agreement with the organization.

(2) A professional fund raising counsel or consultant may only engage in activities on behalf of a charitable organization through written agreement with the organization.

(3) A charitable organization may only engage the services of a professional fund raiser or professional fund raising counsel or consultant through written agreement.

(4) Copies of the agreement required by this section shall be attached to all applications for registration and or a permit.

Amended by Chapter 187, 1996 General Session

13-22-18. Local ordinance.

This chapter does not prohibit any political subdivision of the state from enacting any ordinance regulating the solicitation of contributions within the subdivision's boundaries so long as the ordinance only coordinates enforcement of this chapter with the division.

Enacted by Chapter 280, 1993 General Session

13-22-19. Reciprocal agreements.

(1) The division may convey or exchange information obtained under this chapter with other agencies having regulatory authority over charitable organizations.

(2) The division may accept information that a charitable organization or professional fund raiser files in another state or with any federal agency or other organization in place of substantially similar information that is required to be filed under this chapter.

Enacted by Chapter 280, 1993 General Session

13-22-21. Appeal on behalf of individual.

(1) If a charitable campaign consisting of exempt solicitations for the relief of a named individual sustaining a life-threatening illness or injury, as described in Subsection 13-22-8(1)(d), collects proceeds in excess of \$1,000, the organizer of the

campaign shall give the division written notice of the following:

- (a) the organizer's name and address;
- (b) the name, whereabouts, and present condition of the person for whose relief the contributions are solicited including a letter from the person's attending physician detailing the illness or injury;

- (c) the date the charitable campaign commenced; and

- (d) the purpose to which the collected contributions are to be applied.

(2) Notice under Subsection (1) is due within 10 days after commencing the appeal or collecting in excess of \$1,000, whichever is later.

(3) If the organizer fails to file timely notice, the division shall inform the organizer of the notice requirement and give the organizer 10 additional days as a grace period within which to file the notice. If the organizer fails to file the notice within the grace period, the division may issue a cease and desist order against the organizer.

(4) If, at any time, the division has reasonable cause to believe that the organizer is perpetrating a fraud against the public, or in any other way intends to profit from harming the public through the charitable campaign, it shall issue a cease and desist order against the organizer.

Amended by Chapter 187, 1996 General Session

13-22-22. Charitable sales promotions.

(1) Every charitable organization which agrees to permit a charitable sales promotion to be conducted by a commercial co-venturer on its behalf shall file with the division a notice of the promotion prior to its commencement within this state. The notice shall state:

- (a) the names of the charitable organization and commercial co-venturer;

- (b) that the charitable organization and the commercial co-venturer will conduct a charitable sales promotion; and

- (c) the date the charitable sales promotion is expected to commence.

(2) Prior to the commencement of a charitable sales promotion within this state, every charitable organization which agrees to permit a charitable sales promotion to be conducted in its behalf, shall obtain a written agreement, containing such terms as may be required by rule of the division, from the commercial co-venturer which shall be available to the division upon request.

(3) A commercial co-venturer shall keep the final accounting for each charitable sales promotion conducted in this state for three years after the final accounting date and make the accounting available to the division upon request.

(4) The commercial co-venturer shall disclose in each advertisement for a charitable sales promotion the dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose.

Enacted by Chapter 210, 2001 General Session

13-22-23. Fiduciary capacity.

Every person soliciting, collecting, or expending contributions for charitable purposes, and every officer, director, trustee, or employee of any person concerned

with the solicitation, collection, or expenditure of those contributions, shall be considered to be a fiduciary and acting in a fiduciary capacity.

Enacted by Chapter 210, 2001 General Session